

IN THE MATTER OF
THE REAL ESTATE ACT, C. R-1.3
AND
IN THE MATTER OF LARRY STEWART

DECISION OF THE
SASKATCHEWAN REAL ESTATE COMMISSION

Commission File: #2008-65

Before: A Saskatchewan Real Estate Commission Hearing Committee
comprised of the following:
Randal C. Touet - Chairperson
Larry Gingerich
Terry Powell

Appearances: Ed Miller, on behalf of the Investigation Committee
Larry Stewart, Broker

Hearing Date: May 21, 2009

Written Decision: June 11, 2009

The Mitigation Hearing was held May 21, 2009 at the Saskatoon Club, 2nd Floor, 417 - 21st Street East, Saskatoon, Saskatchewan before a Hearing Committee (“the Committee”) of the Commission. The Statement of Facts and Admissions dated February 20, 2009 provided particulars of Larry Stewart’s violation and admissions.

CHARGE and ADMISSION OF MISCONDUCT

Larry Stewart pled guilty to a charge of professional misconduct contrary to Section 39(1)(c) of *The Real Estate Act* in that he breached Commission Bylaw 726(b) between August 8 and October 2, 2008 (both dates inclusive) by doing one or more of the following:

- authorizing and failing to proof advertising in the August/September and September/October issues of *Homes and Land of Saskatoon and Northern Saskatchewan* that represented 2007 Market Share when the actual figures represented only June 2007 MLS data;
- authorizing and failing to proof advertising in the August/September and September/October issues of *Homes and Land of Saskatoon and Northern Saskatchewan* that attributed 2007 Market Share sales to brokerages whose names do not exist on the registry at the Saskatchewan Real Estate Commission; and
- authorizing and failing to proof advertising in the August/September and September/October issues of *Homes and Land of Saskatoon and Northern Saskatchewan* that references 2007 sales of Re/Max Saskatoon in comparison to Century 21, Hallmark, Realty Executives and Sutton Group (brokerages not registered in Saskatoon or Saskatchewan).

LEGISLATION

Section 39(1)(c) of *The Real Estate Act* states:

“Professional misconduct is a question of fact, but any matter, conduct or thing whether or not disgraceful or dishonourable is professional misconduct within the meaning of this *Act*, if it is a breach of this Act, the regulations or the bylaws or any terms or restrictions to which the registration is subject.”

Commission Bylaw 726(b) states:

“Any advertisement or incentive or the offering of any incentive or the participation in an incentive program to the public as an inducement to trade in real estate undertaken or authorized by a registrant shall not be: (b) inaccurate.”

FACTS

In accordance with subsection 9(4) of *The Real Estate Regulations* (“the Regulations”), the Committee accepted Larry Stewart’s Statement of Facts and Admissions, which include the following relevant points:

1. Larry Stewart has been continuously registered under the provisions of *The Real Estate Brokers Act, 1987* and *The Real Estate Act* in the Province of Saskatchewan with the Saskatchewan Real Estate Commission since October 6, 1975.
2. Larry Stewart successfully completed the pre-licensing course in August 1975.
3. Larry Stewart completed the continuing professional development seminars each registration year since 2001-2002.
4. Larry Stewart is presently registered under the provisions of *The Real Estate Act* as a broker with Re/Max Saskatoon.
5. In the summer of 2008, Mr. Stewart met with Mr. John Friesen of *Homes and Land* magazine for the purpose of purchasing advertising and showing market share.
6. As part of the market share process, Mr. Stewart authorized his employees to scan market share information and send that information to *Homes and Land* magazine. Time and distance constraints with the publisher, led to the magazine going to print without Larry Stewart proofing the final ad’s accuracy.
7. The advertisement referenced entities: Century 21; Hallmark; Realty Executives; and Sutton Group. No such entities are registered in Saskatchewan with the Saskatchewan Real Estate Commission but rather entities such as Century 21 Conexus Realty Ltd., Hallmark Realty & Associates Limited, Realty Executives Saskatoon and Sutton Group – Norland Realty are registered as brokerages in Saskatchewan.
8. Mr. Stewart acknowledged that Volume I Issue 2 contained advertising errors and that no reference should have been made to other brokerage names or attributed percentage sales to those brokerages; any references were a mistake.
9. Volume I Issue 3 of *Homes and Land* came forward and went to print in September and October 2008 with the identical advertising errors as in Volume I Issue 2.

REPRESENTATIONS

The Investigation Committee representative, Ed Miller, confirmed that Mr. Stewart has been a registrant since 1975 and this was his first time before the Commission. Mr. Miller indicated that this offence is all about inaccurate advertising and that the entities set forth in the publication are not registered with the Commission and are not in existence.

Mr. Miller acknowledged that this investigation arose from a complaint from a fellow registrant. Mr. Miller was not asking for suspension or cancellation of Mr. Stewart's Certificate of Registration. Mr. Miller wanted to ensure that Mr. Stewart understood the importance of accurate advertising and that the industry views the fine as an indication of the Commission ensuring that the rules for registrants are being enforced.

Mr. Stewart was cooperative in the investigation and this was his first offence. The error on the names was a subtle difference from the proper names.

Mr. Miller noted that Mr. Stewart was an experienced registrant and as broker he was responsible for the overall supervision of the registrants at his brokerage.

The Investigation Committee recommended a letter of reprimand and a fine of \$2,500.00 or more. This was to provide specific deterrence to Mr. Stewart to ensure that he ensured that his advertising was accurate in the future and was expected to provide general deterrence to the other registrants to ensure they know they must have accurate advertising.

Mr. Miller referred the Committee to the Slade Desrocher case where he received a \$750.00 fine for inaccurate advertising on underground condominium parking; to the Linda Boxall case where she advertised conditionally sold properties as being sold and received a \$750.00 fine; and to the Reg Kotlar decision where he received a \$500.00 fine for inaccurately advertising the square footage of a property.

Mr. Stewart stated that he did not want the wrong information going into the publication, but this was a new publication and he was unable to proof-read the final product. He said it was not to be run a second time and he stopped it on the Internet but not on the paper product. Mr. Stewart admitted his error, but felt a fine of \$2,500.00 was too high, given the circumstances. He felt there was no harm to the public or to the other brokerages.

DECISION

In accordance with the *Act* and regulations, the Committee made the following orders:

- a) Pursuant to clause 38(1)(f) of the *Act*, that Larry Stewart receive an order of reprimand for the violation of Commission Bylaw 726(b);
- b) Pursuant to subclause 38(2)(a)(i) of the *Act*, that Larry Stewart, by August 15, 2009, pay to the Saskatchewan Real Estate Commission, a \$1,000.00 fine for the said violation; and
- c) Pursuant to clause 38(2)(b) of the *Act*, that Larry Stewart's registration shall be suspended if he fails to pay any portion of the fine within the said period of time.


RATIONALE

The Hearing Committee, in considering the disciplinary action, considered Mr. Stewart's lack of previous sanction history and his extensive experience in the real estate industry.

The Hearing Committee states that it is extremely important that advertising is accurate. This is an expectation by the public and is an obligation for the registrants. The problems Mr. Stewart encountered in proof-reading the advertising before publication are a factor which kept the fine lower in this circumstance. The obligation to properly proof-read advertising still remains with the registrant. In circumstances such as this where Mr. Stewart is the broker with in excess of a hundred agents, it is imperative that he set an example for his registrants as to the proper manner in which to deal with their advertising.

The Committee wants to be clear that registrants must check the accuracy of their advertising. The brokers should ensure that all their agents have this foremost on their minds before the advertising goes out and it is their obligation to make sure it is accurate or they may be before the Commission for discipline.

Dated at Saskatoon, Saskatchewan this 11th day of June, 2009.



Randal C. Touet, Chairperson